IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITON NO.388 OF 2004

Khadi & Village Industries
Commission Gramodaya, 3, Irla
Road, Vile Parle (W),
Mumbai - 400 056. ..Petitioner.

V/s.

Jagdish Prasad Prajapati,
Jai Bajrangh Chawl, Near
Bharatmata Mandir, Kranti
Nagar,Khandivali (East),
Mumbai - 400 101. ..Respondent.

Mr.Avinash Jalisatgi, advocate with Amol Desai & Nagendra Dube for petitioner.

Mr.Jaiprakash Sawant, advocate with Kiran T.Patil for respondent.

CORAM : J.P.DEVADHAR, J.

DATED : 15TH JULY, 2005.

ORAL JUDGMENT

1. The petitioner challenges the award of the Central Government Industrial Tribunal No.1 at Bombay dated 23/7/2003. By this Award, the petitioner is directed to reinstate the respondent with effect from 1/11/1999 with back wages at the rate of Rs.1,500/- p.m. from 1./11/1999 till the respondent is absorbed.

2. The facts relevant for the present petition

are that the petitioner is a Commission established by the Central Government under Khadi & Village Industries Commissioner Act, 1956. On 6th March, 1995 the respondent was employed in a temporary vacancy on daily wages. Admittedly, an appointment letter was issued by the petitioner appointing the respondent for a period of 89 days but subsequently, the services have been continued without issuing any appointment letter. It is also an admitted position that the respondent has rendered continuous temporary service for more than three years. However, by letter dated 29 October, 1999, the temporary service of the respondent was sought to be discontinued with effect from 1/11/1999. The said letter reads as under :-

" CEO CELL

No.CEO/Gen.3/102/99-2000

29th Oct. 99

It is learnt that the following daily wagers are working for a long time. This should be immediately discontinued as it is likely to lead to complication regarding permanent in appointment.

1. Shri. Promod Avasti in Canteen

2. Shri. Prajapathi in DIT Section

Action may be taken so that they are discontinued w.e.f. 1.11.99."

sd/-
Chief Executive Officer

Director (Adm.)

Director (Adm-V) "

3. Thereupon the respondent raised an industrial dispute and the Central Government being the appropriate authority, referred the dispute to the Central Government Industrial Tribunal No.1 under the provisions of Industrial Disputes Act, 1947. The terms of reference were :-

> " Whether the action of the Management of Khadi & Village Industries Commission, Mumbai in terminating of the services of the workman Sh.Jagdish Prasad Prajapati who have worked for 3 years legal and justified ? If not, to what relief is he entitled to ? "

4. Accordingly, the respondent filed his statement of claim and the petitioner filed their written statement before the Tribunal. After leading evidence and hearing both sides, the Presiding Officer of the Industrial Tribunal made an Award on 23rd July, 2003 ordering reinstatement of the respondent with back wages at the rate of Rs.1,500/- per month from 1/11/1999 till his reinstatement. Challenging the aforesaid order passed by the learned Presiding Officer of the Industrial Tribunal, the present petition is filed.

5. Mr.Avinash Jalisatgi, learned counsel appearing for the petitioner submitted that the Industrial Tribunal was in error in directing the reinstatement of the respondent with back wages because the appointment of the respondent as a temporary worker itself was contrary to the recruitment laws. According to the learned counsel, when the temporary appointment itself was contrary to the recruitment Rules, the Tribunal could not have held that the respondent is entitled to permanency in service based on such illegal temporary appointment. He submitted that the service of the respondent was terminated in compliance of the circular dated 26th April, 1999 issued by the Director (Administration) wherein it was stated that that no daily wage worker or on contract who is working for more than 89 days may continue in employment. The learned counsel for the petitioner further submitted that since 1990 the recruitment to the permanent posts in the petitioner commission has been banned by the Central Government and, therefore, the Tribunal could not have ordered reinstatement with back wages. Relying upon the decision of the Apex Court in the case of **Himanshu Kumar Vidyarthi & Ors. V/s. State of Bihar & Ors.** reported in **1997 II C.L.R.15**, the learned counsel for the petitioner submitted that daily wage worker has no right to the post and in the facts of the

present case, discontinuation of the service of the respondent was just and proper and the Industrial Tribunal was in error in reinstating the respondent with back wages. Accordingly, the learned counsel for the petitioner submitted that the award is liable to be quashed and set aside.

6. Mr.Jaiprakash Sawant, learned counsel appearing for the respondent on the other hand supported the Award made by the Presiding Officer of the Industrial Tribunal.

7. I have carefully considered the rival submissions. In the present case, the evidence on record shows that the respondent has continued temporary service of more than four and half years. The service of the respondent was not terminated on the ground that no work was available but on the ground that if the services were continued, the respondent may claim permanency. Thus, from the order of termination, it is clear that although there was work available, the services of the respondent was discontinued merely because the respondent may claim permanency. Such a termination order in my view cannot be sustained being contrary to the principles of the Industrial Law. Although the employer has discretion to engage services

of temporary workmen, discontinuation of the services of the temporary workmen solely with a view to deny the right available to an employee under the statute cannot be upheld. No material is brought on record to show that the temporary service is not available. The fact that several permanent posts have been abolished by the Central Government or the fact that there is a ban on recruitment to permanent post cannot be a ground to justify the discontinuation of temporary service, especially when it is not the case of the petitioner that the respondent cannot be continued in temporary service on account on non availability of work. In this petition, we are not concerned with an issue as to whether the respondent is entitled to permanency in service and we are only concerned with the issue as to whether the discontinuation of the temporary service of the respondent is justified or not.

8. The decision of the Apex Court in the case of Himanshu Kumar Vidyarthi (supra) relied upon by the learned counsel for the petitioner is distinguishable on facts. In that case, the workman who had rendered temporary service of 4 days only had contended that the termination of his service was in violation of section 25-F of the Industrial Disputes Act, 1947. In that context, the Apex Court held that the daily wage

employee has no right to the post. In the present case, the respondent has put in more than four and half years of temporary service and his services were sought to be terminated not on the ground that work is not available but on the ground that the workman may claim permanency in accordance with law. Thus, the decision of the Apex Court in the case of Himanshu Kumar Vidyarthi (supra) is distinguishable on facts. Moreover, in the present case, in implementation of the award passed by the Industrial Tribunal, the petitioner has already reinstated the respondent in the temporary service and the respondent has paid the back wages as ordered in the impugned Award. In this view of the matter, in my opinion, no case is made out for interference with the Award passed by the Industrial Tribunal.

9. Accordingly, petition is dismissed and rule stands discharged with no order as to costs.

Sd/-

(J.P. DEVADHAR, J.)